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BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
STATE OF MONTANA

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3  
4 IN THE MATTER OF THE CIVIL  
5 PENALTY IMPOSED AGAINST  
6 THE MONTANA PRESERVATION  
7 ALLIANCE

8  
9 FINDINGS OF FACT, CONCLUSIONS OF LAW,  
10 ORDER, AND MEMORANDUM OPINION  
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12 These informal contested case proceedings were filed before the Commissioner  
13 of Political Practices (Commissioner) to consider the appeal of the principal  
14 referenced above. Pursuant to the provisions of Montana Code Annotated § 5-7-306,  
15 the principal appealed the Commissioner's assessment of a civil penalty resulting  
16 from its late filing of a post-special session lobbying disclosure report. The principal  
17 filed a written Waiver of Hearing waiving its right to an in-person hearing, and  
18 submitted a written statement for the Commissioner's consideration.

19 Based on the written submissions of the principal, the documents of record in the  
20 Commissioner's file, and the applicable law, the Commissioner makes the following  
21 findings of fact, conclusions of law, and order.

22 **FINDINGS OF FACT**

23 1. The Montana Preservation Alliance (Alliance) is a principal registered with the  
24 Commissioner.

25 2. The 2003 Montana Legislature passed House Bill 38 and the governor signed  
26 it into law. The law took effect on February 18, 2003. House Bill 38, now codified  
27 at § 5-7-306, MCA, establishes civil penalties that are required to be assessed against any  
person who fails to file lobbying disclosure reports within the time required by law.

3. The post-special session 2007 lobbying disclosure report for the Alliance was  
required to be filed no later than June 14, 2007.

1       4. On June 12, 2007, the office of the Commissioner sent an email to all  
2 principals, including the Alliance. The email advised that a post-special session  
3 2007 lobbying disclosure report was required to be filed no later than June 14. The  
4 email referenced the appropriate form that was required to be filed, known as a form  
5 L-5A, and noted that the form was available for download on the Commissioner's  
6 website.

7       5. The Alliance failed to file its L-5A on or before the due date.

8       6. On June 15, 2007, the Commissioner sent a letter via email to the Alliance  
9 stating that an L-5A report was due by June 14, 2007, but had not been received.  
10 The letter stated that a civil penalty started being assessed on June 14, 2007 at \$50  
11 per day, and would continue until the report was filed or until the penalty amount  
12 reached \$2,500. The letter urged the principal to fax the delinquent report  
13 immediately, followed by a hard copy.

14       7. On June 19, 2007, the principal filed its report. Because the report was filed  
15 three business days late, a fine of \$150 was assessed.

16       8. The Alliance requested a hearing to contest the civil penalty. The  
17 Commissioner issued a Notice of Agency Action and Opportunity for Hearing on  
18 August 9, 2007. The Alliance filed a written Waiver of Hearing and submitted a  
19 written statement for the Commissioner's consideration.

20       9. In a written statement, Executive Director Chere Justo asked on behalf of the  
21 Alliance that the penalty be waived. She stated that the report was filed late based on  
22 the Alliance's belief that since it did not engage in any lobbying during the special  
23 session, it was not required to file a report. She also stated that the Alliance registered  
24 anticipating it would lobby more than it did, but that its lobbying activities during the  
25 regular session did not rise to the level that would require registration.

26       10. The Alliance reported lobbying payments of \$1,600 during the regular  
27 session and no lobbying payments during the special session.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing --**

**suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

4. § 5-7-208(2)(c), MCA, requires a lobbying disclosure report to be filed with the Commissioner “no later than 30 days following adjournment of a legislative session,” and the report must include “all payments made during the session, except as previously reported.” If payments are not made during the reporting period, the principal must file a report stating that fact. § 5-7-208(4), MCA.

5. The second sentence of § 5-7-208(1) states:

A principal is subject to the reporting requirements of this section only if the principal makes payments exceeding the amount specified under 5-7-112 during a calendar year.

6. § 5-7-112 established a monetary threshold of \$2,150 for calendar years 2002 through 2004. The threshold amount is adjusted according to the consumer price index in the year following a general election. The adjusted payment threshold for calendar years 2007 and 2008 is \$2,300. ARM 44.12.204.

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**NOTICE:** This is a final decision in a contested case. You have the right to seek judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-4-701 through 2-4-711.

## CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

Chere Jiusto, Executive Director  
Montana Preservation Alliance  
516 N. Park Ste A  
Helena MT 59601

DATED: September 14th, 2007

Mary Baker  
Program Supervisor